

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION

MARCOS ORTIZ,

Plaintiff,

VS.

BRAD LIVINGSTON, *et al*,

Defendants.

§  
§  
§  
§  
§  
§  
§  
§

CIVIL ACTION NO. G-12-15

**MEMORANDUM AND ORDER OF DISMISSAL**

Marcos Ortiz (#1049113), an inmate in custody of the Texas Department of Criminal Justice, has filed a complaint under 42 U.S.C. § 1983, alleging violations of his civil rights. He complains of medical treatment and alleges that fraudulent x-rays are being used by prison officials to belie his medical complaints.

Pursuant to 28 U.S.C. § 1915(g), a prisoner that has three or more prior federal civil actions dismissed as frivolous, malicious, or for failure to state a claim, may not proceed ifp without a showing he is “under imminent danger of serious physical injury.” Ortiz has at least three previous federal actions dismissed for failure to state a claim or as frivolous. *See Ortiz v. Fernald*, No. H-02-CV-2897 (S.D. Tex., *dismissed as frivolous* Feb. 4, 2004; *Ortiz v. Fernald*, No. H-04-CV-20186 (S.D. Tex., *dismissed as frivolous*, June 18, 2004; *Ortiz v. Brown*, G-02-CV-361 (S.D. Tex., *dismissed as frivolous*, March 30, 2004.

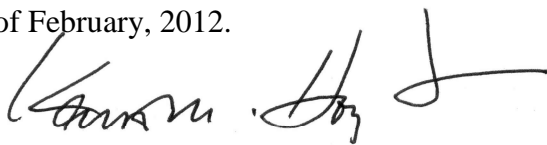
Ortiz’ complaint, even liberally construed, presents no evidence that he was in imminent danger of physical injury when this action was filed. *See Carson v. Johnson*, 112 F.3d 818, 822-23 (5th Cir. 1997). Therefore, Ortiz is barred from proceeding *in forma pauperis*.

Accordingly, it is **ORDERED** that Ortiz is **DENIED** leave to proceed IFP. It is further **ORDERED** that this complaint is **DISMISSED** as barred by the three-strike provision of 28 U.S.C. § 1915(g). The dismissal is with prejudice to the refiling of an *in forma pauperis* lawsuit raising the same claims as herein presented, but without prejudice to the refiling of this lawsuit with full payment of the \$350.00 filing fee.

Ortiz has incurred six frivolous dismissals since receiving his third strike in 2004, three in the last twelve months. His filings are becoming abusive. Ortiz is warned that the filing of future complaints without paying the filing fee or without showing he is under imminent danger of physical injury from the defendants may result in the imposition of sanctions.

The Clerk shall provide a copy of this order by regular mail, facsimile transmission, or e-mail to: (1) the TDCJ-Office of the General Counsel, Capitol Station, P.O. Box 13084, Austin, Texas, 78711, Fax: 512-936-2159; (2) the Inmate Trust Fund, P.O. Box 629, Huntsville, Texas 77342-0629, Fax: 936-437-4793; and (3) the District Clerk for the Eastern District of Texas, 211 West Ferguson, Tyler, Texas 75702, Attention: Manager of the Three Strike List.

SIGNED at Houston, Texas this 2nd day of February, 2012.

A handwritten signature in black ink, appearing to read 'Kenneth M. Hoyt', written over a horizontal line.

Kenneth M. Hoyt  
United States District Judge